IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED;7.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.NO.8465 OF 1998

The Madura Coats Workers
Co-operative Stores Ltd.,
(Regd.No.A.1449)rep. By
its Secretary N.Nalayira Arumugam
2,3,Arappalayam Cross Road
Madurai 16 ..Petitioner

vs

1.The Union of India
rep. by its Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi

2.The Assistant Commissioner of
Central Excise
Madurai I Division
Madurai 2 ..Respondents

Petition is filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in C.No.V/33/30/19/98-Adjn dt.3.6.98 (Order No.26/98) and quash the same as illegal, perverse and unconstitutional and further direct the 2nd respondent to classify the product, "Shikai powder" under Chapter heading 14 of the Central Excise Tariff Act, 1985 and consequently, declare that the product, "Shikai power" sold by the petitioner is not eligible to Central Excise levy.

For petitioner :Mr.Jayachandran
For respondents 1 and 2 :Mr.K.Veeraraghavan,SCGSC

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ORDER

The petitioner has filed the Writ Petition for issue of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in C.No.V/33/30/19/98-Adjn dt.3.6.98 (Order No.26/98) and quash the same as illegal, perverse and unconstitutional and further direct the 2nd respondent to classify the product, "Shikai powder" under Chapter heading 14 of the Central Excise Tariff Act, 1985 and consequently, declare that the product, "Shikai power" sold by the petitioner is not eligible to Central Excise levy.

2.The petitioner is a co-operative society which also interalia manufactures shikai powder. They got shikai seeds and crushed them and sold the same. According to the petitioner, shikai is not excisable good. The respondents have treated the said goods are excisable goods and imposed excise duty. Challenging the same, the present writ petition is filed.

3.The learned counsel for petitioner relied on the judgment of this Court rendered in MAYIL MARK NILAYAM VS. SUPERINTENDENT OF CENTRAL EXCISE, MADRAS (2001 (127) E.L.T 659 (Mad). In this case, this Court has held that the Seeakkai will not fall under the ambit of items `other' grouped as 3305.99 and therefore it is not an excisable commodity. Seeakkai is a natural product and it is crushed into powder and used for removing oil stains or used for taking oil bath. It is misnomer to call seeakkai as a soapnut. Seeakkai or Arappu thool will not fall under any of the entries as heading even if they are mixed with one or more other elements and used for the purpose of bath or cleaning utensils as the case may be. Nor it will fall under other items as the expression has to be read ejusdem generis. The expression `seeakkai' means `soap pod wattle' (Tamil Lexicon). Hence it is clear that Seeakkai is not soapnut powder or soapnut. Hence it is different from soapnut and it is not in effect a substitute. It is neither a detergent or a scouring powder nor it has any application to the oil to the hair, nor it will come under any of the headings in Chapter 33 or 34. It cannot also be brought under the expression `other' in any of the chapters as well. Hence, it is clear that the two products namely Seeakkai and Arapputhool which are being used by poor villagers, as a substitute are not excisable products or commodity. It is clear that it is not the intention of the legislature to bring in those products as one of the excisable commodities. Both the chapters will not apply and therefore the two products are not excisable, though it cannot be ruled out that there was no manufacturing process at all.' Therefore, the learned counsel for the petitioner prayed that the impugned

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order is liable to be quashed as the said goods are not excisable.

4.Learned Senior Central Government Standing Counsel for the respondents submitted that a Division Bench of the Karnata High Court has held that shikai is also an excisable good and against which the manufacturer has filed Special Leave Petition before the Supreme Court and the said Special Leave Petition is dismissed and therefore, the shikai is an excisable good and hence, the present writ petition is liable to be dismissed.

5.Learned Senior Central Government Standing further submitted that against the aforesaid order of the learned single Judge of the High Court of Madras, an appeal has been filed and the same has been admitted and is pending for adjudication. Under those circumstances, the order of the learned single judge cannot be relied upon by this Court, especially, when the Supreme Court has dismissed the Special Leave Petition filed against the order of the Division Bench of the Karnataka High Court.

6.Where there is a judgment by a learned single Judge of this Court, this Court is bound to follow the same unless it differs from that view (in which case it has to be referred to a Bench) or there is a judgment of the Supreme Court contrary to the same. The judgment relied on by the learned Senior Central Government Standing Counsel is the judgment issued by some other High Court and the same is decided on a different ground and it cannot be taken into account, since this Court is bound by the earlier precedents of this Court. Therefore, the order of the learned single Judge of this Court is a binding precedent and there is no reason to differ. The mere fact that the appeal has been filed against the said order and is pending does not make the judgment non-est. It is also clarified that this Court is passing the order following the order of the learned single Judge. However, it is open to the respondent to file an appeal.

7.Under these circumstances, on the basis of the order of the learned single Judge and there is no reason to differ from that view already taken, the impugned order is set aside on the ground that shikai is not an excisable good for the reasons stated by the learned single judge in the order.

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8.Consequently, the Writ petition is allowed as prayed for. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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1.The Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi

2.The Assistant Commissioner of
Central Excise
Madurai I Division
Madurai 2

1 cc to Mr. K. Jayachandran, Advocate SR. 53544
1 cc to Mr. K. Veeraraghavan, SCGSC SR. 53566

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